

General Information Letter: Nexus determinations cannot generally be made by letter ruling.

December 22, 2003

Dear:

A copy of your October 22, 3002 letter has been routed to me to respond to your question regarding corporate income and franchise taxes. Your letter states as follows:

I am exploring sales and use tax collection/remittance responsibilities for my client, a US corporation that would be considered foreign to Illinois. My client delivers its product, tangible personal property, to Illinois customers. The attached spreadsheet outlines what I believe are the factors influential in a decision to register to collect sales tax on sales into Illinois. Please have a look at the spreadsheet and respond to the following questions.

1. Should my client be registered for the collection and remittance of sales/use tax in Illinois?
2. Should my client be registered for and submitting corporate income/franchise tax returns in Illinois?
3. If my client should have been registered in the past what should he do about the fact now (note that some of the past sales would have been made to resellers)?

As mentioned above, this letter will only address your second question relating to corporate income tax returns. Please note that according to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The Illinois Department of Revenue does not handle franchise tax matters. Illinois franchise tax is administered by the Illinois Secretary of State's Office. Information regarding Illinois franchise tax may be obtained by writing to the Illinois Secretary of State at the following address:

Office of the Illinois Secretary of State
Department of Business Services
Howlett Building, Room 328
Springfield, Illinois 62756
(217) 782-7880

Your letter indicates that your client sells merchandise to Illinois customers. As a result, your client must register to do business in the state of Illinois. All inquiries regarding how to register as a foreign corporation should also be directed to the Department of Business Services at the Illinois Secretary of State at the same address listed above.

Please note that registration with the Illinois Department of Revenue is also required for foreign

businesses with Illinois customers. Enclosed please find a copy of Form REG-1, which is used to register businesses with the Illinois Department of Revenue.

With respect to your question regarding whether or not your client must file corporate returns with Illinois, Section 502(a) of the Illinois Income Tax Act ("IITA," 35 ILCS 5/101 et seq.) describes when an Illinois income tax return is required. Pursuant to Section 502(a), an Illinois income tax return is required in two situations. The first situation is when a taxpayer is liable for Illinois income tax. The second situation is, in the case of a corporation qualified to do business in Illinois, when the taxpayer is required to file a federal income tax return, regardless of whether such person is liable for Illinois income tax.

Section 201 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The Due Process and Commerce Clauses of the Federal Constitution limit the power of States to subject foreign corporations to tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. Id.

Whether the entity is liable for Illinois income taxes depends on whether there is sufficient nexus between Illinois and the entity. The question of nexus is highly fact-dependent. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and circumstances.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax